

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

CHERYL COOPER,)	
)	
Plaintiff,)	CIVIL NO. 3-95-CV-20101
)	
)	
v.)	
)	
EAGLE FOOD CENTERS,)	FINAL JURY INSTRUCTIONS
)	
Defendant.)	

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INTRODUCTION

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law. Remember to review the preliminary instructions in addition to these instructions. You must not single out some instructions and ignore others because all are important. This is true even though those I gave you at the beginning of or during the trial are not repeated here.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices, or emotions.

INSTRUCTION NO. __

Under the Equal Pay Act, it is unlawful for an employer to pay men and women different wages for equal work on jobs requiring substantially equal skill, effort and responsibility, and which are performed under similar working conditions, except where such pay differential is based on a factor other than sex.

In order to prevail on this claim, Plaintiff must prove each of the following by a preponderance of the evidence:

1. That Plaintiff and a male employee have been employed by Defendant in positions that require substantially equal skill, effort and responsibility;
2. That the jobs in question are performed under similar working conditions; and
3. That Plaintiff was paid a lower wage than male employees doing equal work.

In this case, Plaintiff contends that she performed work that is “equal” to the work performed by Defendant's male employees. She further claims that she and male employees with whom she compares herself worked under similar working conditions. Finally, she alleges that she was paid a lower wage than the males with whom she compares herself.

In response to these claims, Defendant contends that the male employees with whom Plaintiff compares herself performed and perform jobs which require substantially different skill, effort and responsibility, and are performed under different working conditions, and that Defendant did not and does not, therefore, have to pay them the same. Defendant denies that Plaintiff was paid less than the males who performed equal work. Finally, with regard to any and all differences between Plaintiff's salary and salaries of her male co-employees, such differences were and are based on factors other than sex, such as the specific duties of Defendant's male co-employees, their education and experience, and prior salary.

INSTRUCTION NO. ____

With respect to the first fact that Plaintiff must prove -- that she and a male employee have been employed on jobs requiring substantially equal skill, effort and responsibility -- it is not necessary that the two jobs be identical; however, the law requires proof that the performance of the two jobs demand “substantially equal” skill, effort and responsibility. Insignificant and insubstantial or trivial differences do not matter and may be disregarded.

Also, in deciding whether two jobs are substantially equal, you should consider the actual job performance requirements; job classifications, descriptions or titles are not controlling.

Now, in considering this issue you must evaluate the two jobs in three different ways -- “skill,” “effort,” and “responsibility.”

In deciding whether the jobs require substantially equal “skill,” you should consider such factors as the level of education, experience, training and ability necessary to meet the performance requirements of the respective jobs.

Duties that result in mental or physical fatigue and emotional stress, or factors that alleviate fatigue and stress, should be weighed together in assessing the relative “effort” involved. It may be that jobs require equal effort in their performance even though the effort is exerted in different ways on the two jobs; but jobs do not entail equal effort, even though they involve most of the same routine duties, if one job requires other additional tasks that consume a significant amount of extra time and effort.

In deciding whether the jobs involve substantially equal “responsibility,” you should consider the degree of accountability required in the performance of the work, as well as the amount of preparation required to perform the job duties. You should take into account such things as the level of authority delegated to the respective employees to direct or supervise the work of others or represent the employer in dealing with customers or suppliers, and/or the consequences of misperformance of the work in terms of possible loss of business or productivity.

INSTRUCTION NO. ____

With respect to the second fact that Plaintiff must prove -- that the jobs are performed under similar working conditions -- you will note that the test here is whether the working conditions are “similar;” they need not be identical. In deciding whether relative working conditions are similar, you should consider the surroundings or the environment in which the work is performed, including the elements (such as travel) to which employees may be exposed.

INSTRUCTION NO. ____

The third fact that Plaintiff must prove is that Defendant paid her a lower wage than members of the opposite sex doing equal work. As defined under the Equal Pay Act, wages include all forms of compensation, including fringe benefits. You should consider all evidence you have heard concerning the wages that Defendant pays various employees in determining whether Plaintiff has been paid a lower wage than male employees.

INSTRUCTION NO. __

If you determine that Plaintiff has established by a preponderance of the evidence all of the elements of her Equal Pay Act case, then the burden of proof shifts to Defendant to prove by a preponderance of the evidence that the difference in pay is justified by a factor other than sex.

To establish that this exception applies, Defendant must show that Plaintiff's sex provided no part of the basis for the wage difference. In this case, Defendant claims that any differences in pay are based on differences in the specific duties and responsibilities of the male employees to whom Plaintiff compares herself as well as differences in education, experience, and prior salary.

If Defendant establishes that the difference in pay is caused by a factor other than sex, you must decide in favor of the company. On the other hand, if you determine that Defendant has failed to prove that a difference in pay is caused by a factor other than sex (and if you have already concluded that Plaintiff met her burden of proof) then you must decide in favor of Plaintiff.

INSTRUCTION NO. __

If you find that Plaintiff has satisfied her burden of proving by a preponderance of the evidence that she was paid less than male employees performing equal work in violation of the Equal Pay Act, and if you find that Defendant has failed to show that the wage differential was based on a factor other than sex, then you should award damages to Plaintiff to compensate her for the difference between what she was paid and what a male employee or employees were paid for performing jobs requiring substantially equal skill, effort, and responsibility, which were performed under similar working conditions, during the period starting July 27, 1993, through the date of your verdict. The remedy for future damages, if any, beyond the date of your verdict is a matter to be determined by the Judge alone.

INSTRUCTION NO. __

If you find that Defendant discriminated against Plaintiff on the basis of sex, you must then determine whether Defendant willfully violated the Equal Pay Act.

To establish a willful violation of the Equal Pay Act, Plaintiff bears the burden of showing by the preponderance of the evidence that Eagle knew that its conduct violated the Equal Pay Act, or acted with reckless disregard as to whether its conduct was prohibited by the Equal Pay Act. A violation is willful if it is done voluntarily, deliberately and intentionally and not by accident, inadvertence or ordinary negligence. If an employer acts reasonably in determining its legal obligations before taking any action, its actions are not willful. In addition, if an employer acts unreasonably, but not recklessly, in resolving whether its actions are legal, its actions are not willful.

You must find that Defendant's conduct toward Plaintiff was willful if you believe that Defendant knew or showed reckless regard as to whether its decision violated the Equal Pay Act. If you find that Defendant acted willfully, then you may award Plaintiff additional damages to compensate her for the difference between what she was paid and what male employees were paid for performing jobs requiring substantially equal skill, effort and responsibility, performed under similar working conditions, during the period from July 27, 1992 through July 27, 1993.

INSTRUCTION NO. __

In addition to her Equal Pay Act claims that I have described for you, Plaintiff also brings claims under Title VII of the Civil Rights Act of 1964. Under that statute, Plaintiff claims that Defendant discriminated against her because of her sex. Specifically, Plaintiff claims that she was unlawfully denied promotions, paid less than male employees and denied certain training opportunities. Defendant denies Plaintiff's claims.

Although a retaliation claim was mentioned previously in the Preliminary Jury Instructions, the Court has determined that the retaliation claim will not be submitted to the jury.

To establish discrimination based on her sex, Plaintiff must prove what is called a *prima facie* case of discrimination. To establish a *prima facie* case, Plaintiff must prove each of the following elements by a preponderance of the evidence:

- 1) she is a female
- 2) she was performing according to Eagle's legitimate expectations
- 3) she was adversely affected by one or more of the following employment decisions made by Eagle:
 - a) failure to promote her to the position of Buyer or Buyer/Merchandiser,
 - b) failure to train her, or
 - c) setting her compensation
- 4) she was treated less favorably by Eagle than male employees with respect to any employment decision that you find in element No. 3 above.

If you find that Plaintiff failed to meet her burden of proof on any element of her *prima facie* case, then your verdict must be in favor of Eagle. If you find, however, that Plaintiff has proven all of these facts, then you must consider any legitimate, nondiscriminatory reason stated by Eagle for the decisions about which Plaintiff complains. If you find that Eagle has stated a valid reason, then you must decide in favor of the company unless Plaintiff proves by a preponderance of the evidence that the stated reason was not the true reason, but only a pretext or excuse for discriminating against Plaintiff.

Plaintiff can prove that Eagle's stated reason is a pretext by persuading you that it is not believable. However, it is not enough for Plaintiff to prove that Eagle's stated reasons for its decisions

are not the true reasons. This is because Plaintiff always bears the burden of proving by a preponderance of the evidence that her sex was the determining factor in the decisions she challenges. The term “determining factor” means the sole fact that determined that Plaintiff was not to receive the promotion, pay increase or training that she requested.

INSTRUCTION NO. ____

In assessing whether Defendant has stated legitimate reasons for the employment actions about which Plaintiff complains and whether Plaintiff has met her burden of proving those reasons are a pretext for intentional sex discrimination, you are not to second-guess Defendant's decision-making or otherwise substitute your judgment for that of Defendant. Title VII was not intended as a vehicle for judicial review of business decisions. In other words, Defendant is entitled to assign any employee to any job, to determine who should be promoted, to determine who needs training and to set employee's compensation, as long as its decisions are not motivated by discrimination. Under the law, Defendant is entitled to have made mistakes or even to have acted arbitrarily. The issue for you to decide is whether but for Plaintiff's sex, would Defendant have treated her differently.

Moreover, the ultimate burden of persuading you that Defendant intentionally discriminated against Plaintiff remains at all times with Plaintiff. Defendant is therefore not required to prove that its decision was actually motivated by its stated reason.

INSTRUCTION NO. ____

Plaintiff has brought claims under two different statutes: Title VII and the Equal Pay Act. Each statute is governed by a different statute of limitations. The statute of limitations governing the Equal Pay Act provides that if you determine Defendant violated the Equal Pay Act, Plaintiff may recover for unequal paychecks received within two years of commencing this action. Plaintiff filed this action on July 27, 1995. She therefore may recover for unequal paychecks received from July 27, 1993, to the date of your verdict. If, however, you find that Defendant's violations of the Equal Pay Act were willful, Plaintiff may recover for unequal paychecks received within three years of commencing this action, i.e., she may recover for unequal paychecks received from July 27, 1992, to the date of your verdict.

Under the statute of limitations applicable to Title VII, a plaintiff must file a charge with the Equal Employment Opportunity Commission (EEOC) within 300 days of the date the alleged unlawful employment practice occurred. Generally, a plaintiff may recover damages based on discriminatory acts occurring only within the 300-day limitations period. Where, however, a plaintiff can show an otherwise time-barred claim is part of a pattern or continuing practice of violation, the plaintiff may recover damages based on discriminatory acts occurring before the limitations period if she can show a substantial connection between the violation within the limitations period and the older, time-barred acts.

Plaintiff filed her Charge of Discrimination with the EEOC on February 4, 1994. She may recover damages based on discriminatory acts occurring after April 18, 1993. Plaintiff may recover damages based on discriminatory acts occurring before April 18, 1993, if the acts were part of a pattern or continuing practice of violation and if she can show a substantial connection between the violation within the limitations period and the older, time-barred acts. Back pay cannot accrue from a date more than two years before the filing of a charge with the EEOC, in other words before February 4, 1992.

Certain evidence relating to acts falling outside the applicable limitations period have been admitted only for background and context as to relevant testimony. You may not consider such

evidence as evidence of damages.

INSTRUCTION NO. ____

If you find in favor of Plaintiff under her Title VII claim, then you must award her such sum as you find by the preponderance of the evidence will fairly and justly compensate Plaintiff for any damages you find Plaintiff sustained as a direct result of Defendant's failure to train, promote, or adequately pay Plaintiff. Plaintiff's claim for damages includes two distinct types of damages and you must consider them separately:

You must determine the amount of any wages and fringe benefits Plaintiff would have earned in her employment with Defendant if Defendant had not intentionally discriminated against her because of her sex through the date of your verdict, minus the amount of earnings and benefits that Plaintiff received during that time. Second, you must determine the amount of any emotional distress damages sustained by Plaintiff. You must enter separate amounts for each type of damages in the verdict form and must not include the same items in more than one category.

INSTRUCTION NO. ____

Plaintiff has alleged that, as a result of Defendant's intentional discrimination she has suffered emotional distress. Plaintiff has the burden of proving any such compensatory damages by a preponderance of the evidence. If Plaintiff does not establish that she has experienced emotional pain and mental anguish because of Defendant's conduct, then she cannot recover compensatory damages.

If you determine that Plaintiff has proven by a preponderance of the evidence that she has experienced emotional pain and mental anguish, you may award her damages for those injuries. No evidence of the monetary value of such intangible things as pain and suffering has been, or needs to be introduced into evidence. No exact standard exists for fixing the compensation to be awarded for these elements of damages. The damages that you award must be fair compensation -- no more and no less.

When considering the amount of monetary damages to which the Plaintiff may be entitled, you should consider the nature, character and seriousness of any emotional pain and mental anguish Plaintiff felt. You must also consider its extent or duration, as any award you make must cover the damages endured by Plaintiff since the wrongdoing, to the present time.

INSTRUCTION NO. ____

In addition to the damages mentioned in the other instructions, the law permits the jury under certain circumstances to award an injured person punitive damages in order to punish the defendant for some extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct.

If you find for Plaintiff under her Title VII claim, and if you find that Defendant acted with malice or with reckless indifference to Plaintiff's right not to be discriminated against on the basis of her sex, then in addition to any damages to which you find Plaintiff entitled, you may, but are not required to, award Plaintiff an additional amount as punitive damages if you find it is appropriate to punish Defendant or to deter Defendant and others from like conduct in the future. The decision whether to award Plaintiff punitive damages, and the amount of those damages, is within your discretion.

INSTRUCTION NO. ____

If you find in favor of Plaintiff on her Title VII claim, but you find that Plaintiff's damages have no monetary value, then you must return a verdict for Plaintiff in the nominal amount of One Dollar (\$1.00).

INSTRUCTION NO. _____

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

You should not interpret the fact that I have given instructions about Plaintiff's damages as an indication in any way that I believe that Plaintiff should, or should not, win this case.

INSTRUCTION NO. ____

I am giving you a verdict form. Once you have finished responding to the issues in the verdict form, the form should be signed by the person you have selected to serve as presiding juror.

Your response to each of the special interrogatories must represent the considered judgment of each juror. Your answers must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of the other jurors or for the mere purpose of returning a verdict.

INSTRUCTION NO. ____

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members to act as presiding juror. The person so elected is responsible for the orderly, proper, and free discussion of the issues by any juror who wishes to express his or her views. He or she will supervise the balloting and sign the form or forms of verdict that are in accord with your decision and will also sign any written inquiries addressed to the Court. Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally fully covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering a jury room, to announce an emphatic opinion in a case or determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans. You are judges -- judges of the facts. Your sole interest is to ascertain the truth.

Dated this ____ day of February, 1997.

CELESTE F. BREMER
CHIEF U.S. MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

CHERYL COOPER,)	
)	
Plaintiff,)	CIVIL NO. 3-95-CV-20101
)	
)	
v.)	
)	
EAGLE FOOD CENTERS,)	SPECIAL VERDICT FORM 1
)	
Defendant.)	

Verdict Form No. 1
(Sex Discrimination in Pay Under the Equal Pay Act)

Please answer the following questions. Your answers must be unanimous.

1. Did Cheryl Cooper prove by a preponderance of the evidence that Eagle violated the Equal Pay Act?

_____ Yes
_____ No

2. If you have found in favor of Cooper, please:

a) State the total amount of wages and benefits lost by Cooper:

\$ _____ as lost wages and benefits, between July 27, 1993,
and the date of your verdict.

b) State whether Cheryl Cooper proved by a preponderance of the evidence that Eagle's violation of the Equal Pay Act was "willful."

_____ Yes
_____ No

c) If you answered 2(b) "Yes," state the total amount of wages and benefits lost by Cooper:

\$ _____ as lost wages and benefits, between July 27, 1992,
and July 27, 1993.

Dated _____

Foreperson

Please proceed to Verdict Form No. 2.

ON THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

CHERYL COOPER,)	
)	
Plaintiff,)	CIVIL NO. 3-95-CV-20101
)	
)	
v.)	
)	
EAGLE FOOD CENTERS,)	SPECIAL VERDICT FORM 2
)	
Defendant.)	

Verdict Form No. 2
(Title VII)

Please answer the following questions. Your answers must be unanimous.

Sex Discrimination Claim

1. Did Cheryl Cooper prove by a preponderance of the evidence that Eagle has intentionally discriminated against her because of her sex, in violation of Title VII, in any of the following ways:

a) failure to promote her to the position of Buyer or Buyer/Merchandiser

_____ Yes

_____ No

b) failure to train her

_____ Yes

_____ No

c) setting her compensation

_____ Yes

_____ No

If your answers to all the above questions are "No," then do not answer any other questions. If your answer to any of the above questions is "Yes," then answer question number two.

2. Please state the amount of damages that Cooper has proved by the preponderance of the evidence:

- a) \$ _____ as lost wages and benefits. (If you awarded damages under the Equal Pay Act on Verdict Form No. 1, then only award the additional lost wages and benefits to which you find Cooper is entitled, if any, under Title VII. If you did not award damages under the Equal Pay Act, then award the lost wages and benefits you find appropriate, if any, under Title VII.)
- b) \$ _____ as compensatory damages for emotional distress.
- c) \$ _____ as nominal damages.

Do not award duplicate damages for separate claims.

Punitive Damages

If you answered question number two, then answer question number three.

3. Did Cheryl Cooper prove by a preponderance of the evidence that Eagle's actions were done with malice or reckless indifference to her right not to be discriminated against on the basis of her sex?

_____ Yes
_____ No

If you answered yes to the above question, please state the amount of punitive damages, if any, that you believe is appropriate.

\$ _____

Dated _____

Foreperson